

In the  
**Supreme Court of the United States**

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IN RE OIL SPILL BY THE "AMOCO CADIZ" OFF  
THE COAST OF FRANCE ON MARCH 16, 1978  
ASTILLEROS ESPANOLES, S.A.,

*Petitioner,*

*vs.*

STANDARD OIL COMPANY (INDIANA), AMOCO  
INTERNATIONAL OIL COMPANY, AMOCO TRANS-  
PORT COMPANY, CLAUDE PHILLIPS, and CONSEIL  
GENERAL DES COTES DU NORD, etc., et al.,

*Respondents.*

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**REPLY BRIEF OF ASTILLEROS ESPANOLES, S.A.  
IN SUPPORT OF ITS PETITION FOR A WRIT OF  
CERTIORARI**

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JOSEPH KEIG, JR.  
JAMES E. BETKE  
N. ROSIE ROSENBAUM  
111 West Monroe Street  
Chicago, Illinois 60603  
(312) 372-2000

*Attorneys for Petitioner  
Astilleros Espanoles, S.A.*

*Of Counsel:*

McDERMOTT, WILL & EMERY

Dated: SEPTEMBER 2, 1983

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## TABLE OF CONTENTS

|  | PAGE |
|--|------|
| I. PROPERTY DAMAGE CLAIMS OF FRENCH PLAINTIFFS, DUE TO ALLEGED NEGLIGENCE IN SPAIN, DO NOT ARISE FROM CONTACTS WITH LIBERIANS IN CHICAGO EIGHT YEARS EARLIER .....   | 2    |
| II. THE AMOCO PARTIES HAVE MISREPRESENTED THE FACTS, AND IMPROPERLY SOUGHT TO SUPPLEMENT THE RECORD, TO FABRICATE CONTRACTS WITH AMOCO INTERNATIONAL .....   | 3    |
| III. IT IS IMPROPER AND CONTRARY TO LONG ESTABLISHED LEGAL PRINCIPLES TO PIERCE THE CORPORATE VEILS OF MAJOR CORPORATIONS, SUA SPONTE, TO ENABLE THOSE CORPORATIONS TO OBTAIN JURISDICTION OVER AN ALIEN CORPORATION ..... | 5    |
| IV. IN NEITHER THIS CASE NOR <i>HELICOTEROS</i> DID THE PLAINTIFFS DEAL WITH THE ALIEN DEFENDANT IN THE FORUM STATE. THE TWO CASES THUS RAISE SIMILAR ISSUES .....   | 6    |
| V. CONCLUSION .....  | 7    |

## TABLE OF AUTHORITIES

### CASES:

|  |   |
|--|---|
| <i>Koplin v. Thomas, Haab &amp; Botts</i> , 73 Ill.App.2d 242 (1st Dist. 1966) .....   | 3 |
| <i>Transworld Airlines, Inc. v. Hughes</i> , 308 F.Supp. 679, (S.D.N.Y. 1969), aff'd 449 F.2d 51 (2d Cir. 1971), rev'd on other grounds, 409 U.S. 363 (1973) ..... | 1 |

### OTHER AUTHORITIES:

|  |   |
|--|---|
| Federal Rules of Evidence, Rule 201(b) ..... | 1 |
|--|---|

IN THE  
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No. 82-2034

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Because the briefs of Respondents largely ignore the central issue in this case, and because the Amoco parties, through misstatements of fact and improper supplementation of the record,<sup>1</sup> attempt to pierce the corporate

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<sup>1</sup> This Court may not properly take judicial notice of the trial testimony of Robert Haddow or of the Martinez affidavit, filed in another case, since neither is a source of adjudicative facts "not subject to reasonable dispute," see Federal Rules of Evidence, Rule 201(b); *Transworld Airlines Inc. v. Hughes*, 308 F.Supp. 679, 684 (S.D.N.Y., 1969), aff'd 449 F.2d 51, (2d Cir. 1971), rev'd on other

veil of Amoco Tankers and rewrite the contract to substitute Amoco International as the purchaser of the Amoco Cadiz, Astilleros submits this Reply Brief.

I.

**PROPERTY DAMAGE CLAIMS OF FRENCH PLAINTIFFS, DUE TO ALLEGED NEGLIGENCE IN SPAIN, DO NOT ARISE FROM CONTACTS WITH LIBERIANS IN CHICAGO EIGHT YEARS EARLIER.**

The central constitutional issue in this case is whether property damage claims of French plaintiffs arise from the execution of a contract in Illinois between Astilleros and Amoco Tankers eight years earlier; whether it was foreseeable and predictable when Astilleros executed the contract in 1970 to build the Amoco Cadiz, that subsequent alleged negligence in Spain, coupled with injuries suffered in France, would result in jurisdiction in Chicago. (Claims for breach of contract were to be arbitrated in London.)

Neither the Cotes du Nord nor the Amoco parties really address this issue, and neither cite any authority holding that the constitutionally required nexus between contact and cause of action is present on the facts of this case. Instead, the Respondents emphasize only Astilleros' contacts with Illinois, as if those contacts were alone sufficient, and rely on a clever phrase, "lies in the wake," taken from an otherwise irrelevant Illinois

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<sup>1</sup> (Continued)

grounds, 409 U.S. 363 (1973). However, should this Court choose to consider matters outside the record, Astilleros has included the Haddow testimony and the Martinez affidavit, as an Appendix to this Reply, so this Court can determine for itself the misleading nature of the Amoco statement of facts.

Appellate Court decision. In *Koplin v. Thomas, Haab & Botts*, 73 Ill.App.2d 242 (1st Dist., 1966) the Illinois Appellate Court upheld long arm jurisdiction over a non-resident which had sold 90 option contracts to 50 Illinois residents. The sales themselves allegedly violated an Illinois gambling statute, giving rise to the lawsuit. Thus, the jurisdictional acts, without more, constituted the cause of action. In that context, after noting that the Illinois long arm statute required a "close relationship" between forum activity and cause of action, (73 Ill.App.2d 252) the Court coined the phrase "lies in the wake." *Koplin* does not establish that there is a "close relationship" between the execution of a contract in Illinois and an oil spill eight years later and thousands of miles away, nor does it extend the Due Process clause to cases such as this one.

## II.

### **THE AMOCO PARTIES HAVE MISREPRESENTED THE FACTS, AND IMPROPERLY SOUGHT TO SUPPLEMENT THE RECORD, TO FABRICATE CONTRACTS WITH AMOCO INTERNATIONAL.**

In an attempt to divert the court's attention from the constitutional issues, the Amoco parties improperly seek to supplement the record, and misrepresent both the record and the supplement.

Thus, Amoco asserts (pp. 4, 7) that Astilleros negotiated the Amoco Cadiz contract in Chicago with Haddow, citing Haddow's trial testimony and paragraph 3 of Wren's affidavit. It asserts (page 7) that Astilleros had executed contracts with *Amoco International* to build two other ships, citing Wren's affidavit.

Neither Haddow's testimony nor Wren's affidavit support these statements. Haddow testified that he participated in negotiations with Astilleros *in New York* and *in Spain*, and it is a fair inference that those negotiations related to the Amoco Cadiz, although Haddow does not say so. Haddow did not testify to any negotiations with Astilleros in Chicago *at any time, about any ships.*

Wren's affidavit does not even mention Haddow.

The assertion that contracts for two other ships were between Astilleros and Amoco International is false. Those contracts were between Astilleros and Amoco Transport, (App. p. 101).

Amoco asserts (p. 5) that a second agreement was signed in Chicago in July of 1970 "by Haddow of Amoco International," despite the fact that the "agreement," actually a one page letter, was signed on behalf of Amoco Tankers (App., p. 101). Amoco asserts (page 14) that in two years Astilleros executed, in Illinois, "along with Amoco International," at least four separate contracts. The statement is false. Amoco International executed *no contracts* with Astilleros. The first two contracts were with Amoco Transport, and the last two with Amoco Tankers.

The Amoco Parties' improper and inaccurate reliance on matters outside the record does not end with Haddow. They also rely on an affidavit of Martinez, in a case filed in New York, but do not even acknowledge that the Martinez affidavit is not a part of this record (Amoco Br., p.3, n.2). The Amoco Parties assert (p. 8) that in 1971 Astilleros opened a New York office to solicit business in the United States. Martinez's affi-

davit states however that the attempt to solicit business was in New York, and adds that no business was ever obtained through that office. The Amoco Parties refer to a purported appointment of Mr. Wheeler to solicit business "throughout the United States." The Martinez affidavit contains no such language, and states that Wheeler never obtained any ship construction contracts for Astilleros.

The attempts of the Amoco Parties to mislead this Court about the facts necessarily reflect their concern that the record before this Court, accurately stated, does not permit the assertion of jurisdiction over Astilleros, consistent with Due Process.

### III.

**IT IS IMPROPER AND CONTRARY TO LONG ESTABLISHED LEGAL PRINCIPLES TO PIERCE THE CORPORATE VEILS OF MAJOR CORPORATIONS, SUA SPONTE, TO ENABLE THOSE CORPORATIONS TO OBTAIN JURISDICTION OVER AN ALIEN CORPORATION.**

Through misstatement of the record and improper (and inaccurate) reference to matters outside the record, the Amoco parties attempt to do the same thing the Seventh Circuit did; pierce corporate veils and substitute a new party to the Amoco Cadiz contract. The Amoco parties state repeatedly that Astilleros signed contracts with Amoco International when they know that not to be the case. They insist that all negotiations concerning the Amoco Cadiz were with Amoco International, when it is clear that, to the extent Amoco International employees were involved, they were acting as agents for Amoco Tankers rather than on behalf of International.

Yet while piercing their own corporate veils and substituting new contracting parties themselves, the Amoco parties (and the Cotes du Nord parties as well) insist that the Seventh Circuit's identical actions were unnecessary. Apparently in Respondents' view a substantial portion of the Seventh Circuit's opinion served no purpose.

Apart from the fact that Courts of Appeal do not routinely write opinions without purpose, a reading of the opinion reveals that piercing the corporate veils was critical to the Seventh Circuit's result. Judge Posner, after piercing the corporate veils of Standard, Amoco International, Amoco Transport and Amoco Tankers, stated (Op., p. 6) that negotiating and signing a contract "in the purchaser's domicile" satisfied the first requirement of the Illinois long arm statute. But since Illinois was the purchaser's domicile only after piercing corporate veils and finding that Standard Oil was the purchaser, it necessarily follows that the first requirement of the statute was satisfied only by piercing the corporate veils. No Respondent contests Astilleros' assertion (Pet., pp. 19-23) that the piercing of corporate veils in the circumstances of this case is without precedent in American jurisprudence, and is contrary to established legal principles.

#### IV.

**IN NEITHER THIS CASE NOR HELICOPTEROS DID THE PLAINTIFFS DEAL WITH THE ALIEN DEFENDANT IN THE FORUM STATE. THE TWO CASES THUS RAISE SIMILAR ISSUES.**

The Amoco parties urge that there is no relationship between this case and *Helicopteros* because the Peruvian

defendant there "never once had any dealings with the plaintiffs in Texas," (Amoco Brief, p. 24). Far from distinguishing *Helicopteros*, this points up the similarity, since it is uncontested that here, the French plaintiffs "never once had any dealings" with Astilleros in Illinois. Likewise, three of the four Amoco parties do not even claim to have had dealings with Astilleros in Illinois relating to the Amoco Cadiz, and the fourth (Amoco International) dealt with Astilleros only in the sense that certain of its employees were acting as agents for Amoco Tankers, which is not a plaintiff. If Astilleros is not subject to jurisdiction as to the complaints of the French, then it is not a party and cross claims may not be asserted against a non-party.

V.

**CONCLUSION**

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The principal constitutional issue presented by this case is whether Astilleros' Illinois activities vis-a-vis the Amoco Cadiz give rise to the suits pending here.<sup>2</sup>

As stated in Astilleros Petition, if jurisdiction is proper here, not only is it necessarily predicated only on the ex-

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<sup>2</sup> Many of the contacts relied on by Amoco do not even relate to the Amoco Cadiz, much less to the causes of action. Thus the grounding of the Amoco Cadiz did not arise out of contracts to build other ships, as the District Court properly held (App. to Pet., p. 7a). It did not arise out of discussions regarding liquid natural gas ships which were never built. It did not arise out of unsuccessful solicitations by Astilleros to build other ships, or out of letters, phone calls or visits relating to contracts never consummated (Amoco Br. pp. 7,8).

cution of a contract in Illinois, making jurisdiction a simple mechanical test, but jurisdiction on such facts permits tort claims brought at any time by non-resident plaintiffs injured anywhere in the world as a result of non-forum negligence involving the subject matter of a contract to be brought where the contract was executed. Neither the Due Process clause, the decisions of this Court nor the Illinois long arm statute permit such a result.

Furthermore, that result relies on an unprecedented piercing of corporate veils. Long standing principles of corporate law should not be cast aside, and the Due Process Clause extended beyond existing case law, all to enable Standard Oil to "get at" an alien corporation (699 F.2d 909, 915).

Astilleros Petition for a Writ of Certiorari should be granted.

Respectfully submitted,

JOSEPH KEIG, JR.  
JAMES E. BETKE  
N. ROSIE ROSENBAUM  
111 West Monroe Street  
Chicago, Illinois 60603  
(312) 372-2000  
*Attorneys for Petitioner  
Astilleros Espanoles, S.A.*

*Of Counsel:*

McDERMOTT, WILL & EMERY

Dated: SEPTEMBER 2, 1983

## INDEX TO APPENDIX

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|                           | PAGE |
|---------------------------|------|
| Testimony of Haddow ..... | 1a   |
| Martinez Affidavit .....  | 10a  |

## APPENDIX

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4338 Q. Would you give us your—excuse me— would you give us your age, please?

A. Yes, I'm 60 years old.

Q. And can you give us a brief summary of your professional experience before you joined AMOCO International Oil Company?

A. Yes. I am a graduate of California Maritime Academy as well as the University of California at Berkeley. On graduation from California Maritime Academy in 1941—1942, I went to sea for five years for Moore-McCormack Lines, leaving Moore-McCormack Lines as a chief engineer.

Went back—went to the University of California at Berkeley, graduated from the University of California with a Bachelor of Science degree. Went to work for the Tidewater Oil Company, which subsequently became the Getty Oil Company, in the Marine Department, and rose to head the—to become manager of the Marine Transportation Department for Getty Oil Company, and left them in 1964 for AMOCO International or American International Company, and left American International Oil Company in 1975 and joined Burmah Oil Tankers; was president of Burmah Oil Tankers until September—do you want this to go on beyond the AMOCO?

Q. No.

— 2a —

4339 I take it—well, you have—you left AMOCO International Oil Company in 1975, I take it, and—

A. That's right.

Q. —and you have not had any connection with that company since, is that correct?

A. That's right.

Q. Your seagoing experience, I take it, was in the engineering department?

A. That's right.

4340 Q. And you sailed up to and including the position of chief engineer on ocean-going vessels?

A. Yes.

Q. Now will you describe generally what your duties were with AMOCO International Oil Company in the spring of 1970?

A. I was the manager of the group's marine operations involving approximately 15 vessels owned and chartered, developing outside employment for the vessels as well as maintaining and administering the employment internally of the vessels.

Q. All right. Did you have any responsibility in connection with the acquisition of new vessels?

A. Yes.

Q. And tell us generally what your responsibilities were in that area?

A. On the basis of tonnage forecasts, I would recommend to management the acquisition of new tonnage, either new buildings or charter tonnage.

Q. Do you recall the ordering of two V.L.C.C. tankers which—to be constructed by Astilleros Espanoles in Spain?

A. Yes, I do.

Q. And were there altogether four such tanker that were constructed by Astilleros for AMOCO?

4341 A. It was five.

Q. Five. Do you recall that there were four bearing Hulls Number 93 through 96, which were of similar design?

A. I don't remember the numbers, but the vessels were similar in design.

Q. And was one of those the AMOCO Cadiz?

A. One of what?

Q. One of the vessels of similar design—

A. Yes.

Q. —ordered from Astilleros?

A. Yes.

Q. Did you play any part in the placement or the negotiation of a contract with Astilleros for the first two V.L.C.C. vessels for AMOCO?

A. Yes, I did.

Q. And would you describe what part you played in that—in arranging that contract?

A. Initially it was the development of a crude barter arrangement with the Spanish government authorities in which we were willing to build two vessels, V.L.C.C.s, in Spain providing we could pay for the vessels in crude oil.

Subsequent to the agreement by the Spanish government authorities on the barter arrangement, I with my team entered into negotiations with Astilleros Espanoles

4342 for the construction of two V.L.C.C.s.

Q. Was there a staff under your direction occupied with the question of design, size, specifications, and so forth, of these vessels?

A. Yes, there was.

Q. And could you describe to us what that staff consisted of, how many professional people were involved, what their names and qualifications were?

A. You mean technical people?

Q. Yes.

A. Well, the technical staff was headed up by a man called Robert Sawyer, a graduate naval architect. There was Captain Phillips, the manager of Operations, and myself, as well as backup staff as far as the economic evaluation analysis was concerned.

Q. Other than Mr. Sawyer, were there any other naval architects on your—on the staff concerned with this—in this matter?

MR. HALLER: The question, "Are we talking about the same time frame?" I said, "Yes."

BY THE WITNESS: (Reading)

"A. Yes, there was a man called Joe Wren.

BY MR. HALLER: (Reading)

"Q. Did Mr. Sawyer report directly to you?

A. Yes, he did.

4343 Q. And do you recall what his title or job designation was?

A. He was manager of engineering and technical services.

Q. And was he also—was he in the employ of AMOCO International Oil Company?

A. Yes, he was.

Q. Let me show you a paper which has previously been marked Claimants' Exhibit 1732, and take a moment if you wish to look it over.

My question will be whether you recall having received a memorandum from Mr. Sawyer of which that is a copy?

A. I don't remember receiving the letter.

4344 Q. Do you recall a proposal to have a model constructed for the purposes and tested for the purposes indicated in this memorandum?

A. Yes, I do.

Q. Was that done?

A. Yes.

Q. Was that—was the model constructed by the Netherlands Ship Model Basin at Wageningen, if I pronounce it correctly?

A. It was my understanding it was.

Q. And did you know in April 1970, whether Astilleros had had previous experience building ships of the size of the V.L.C.C.s?

A. I knew that they did not have.

Q. Was it your understanding that the first two V.L.C.C.s ordered by AMOCO would be the first ships of that size to be constructed by Astilleros?

A. I forget the time frame, but at one stage I knew they would be the second and third.

Q. Let me show you what has been marked Claimant's Exhibit 1226 and ask you whether you recall that letter having come to your attention back in May or June of 1970?

A. I remember the proposal.

Q. The first sentence of the letter begins, 'Fur-

4345 ther to the conversations held with you during your recent visit to Madrid.'

I will observe parenthetically that the letter is not addressed to any one individual by name. My question, sir, is whether you participated in conversations in Madrid shortly before the date of this letter?

A. I believe that's correct.

Q. Do you remember who else, if anyone, from AMOCO participated in those discussions?

A. If anyone else participated, it would have been Bob Sawyer and possibly Alberto Rivas.

Q. Who was Alberto Rivas?

A. A naval architect that joined our staff subsequent to the initial discussions on the construction of the first two vessels.

Q. And was he an employee of AMOCO International Oil Company?

A. Yes, he became a—

Q. Speaking now of May 1970?

A. I don't remember.

Q. Now, were you a corporate officer of AMOCO International Oil Company in May 1970?

A. What is a corporate officer?

Q. Like a president, a vice-president, or secretary or

4346 treasurer, or something like that.

A. Yes, I was a vice-president.

Q. The letter which is identified as Claimant's Exhibit 1226 is addressed to AMOCO Transport Company, and my question to you is: Do you know, or first, were you an officer of AMOCO Transport Company at that time?

A. I believe I was.

Q. During the conversations in Madrid preceding this letter, was it suggested to the Astilleros people by yourself or anyone else from AMOCO that their proposal should be addressed to AMOCO Transport Company?

A. Not to my recollection.

Q. Do you have any present recollection—withdrawn.

Do you remember the corporate name of the company that had contracted with Astilleros for the first two AMOCO V.L.C.C.s?

A. No.

Q. Mr. Haddow, I show you a memorandum dated June 9, 1970, which we have marked for identification as Sullivan Number 1—"

MR. HALLER: We have this, can you supply me with the trial designation?

MR. VELTMAN: C 1731.

MR. HALLER: It will be offered as Claimant's

EXHIBIT A

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UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

BRETAGNE-ANGLATERRE-IRLANDE, S.A.,  
(Society Anonymous) a French Corporation, d/b/a  
BRITANNY FERRIES, for itself and on behalf of  
all others similarly situated, *et al.*,

Plaintiffs,

- against -

ASTILLEROS ESPANOLES, S.A.,

Defendant.

78 Civ. 4945

(Judge Motley)

KINGDOM OF SPAIN )  
                       ) ss.:  
CITY OF MADRID    )

AFFIDAVIT

EDUARDO GARCIA MAURINO MARTINEZ, being  
duly sworn, deposes and says:

1. I am Director, Legal Services, of Astilleros Espanoles, S.A. (hereinafter referred to as "Astilleros") and make this affidavit in connection with Astilleros' motion for dismissal of the above suit on grounds of lack of personal jurisdiction, insufficiency of service of process, and *forum non conveniens*.

2. I have been with Astilleros for 19 years, serving as Director of the Legal Department of Cadiz Shipyard from 1959 to 1970, as Director of Shipbuilding Legal Department from 1970 to 1972, and finally as Director of the Legal Department from 1972 to date. My present

duties require me to maintain a thorough understanding of the matters discussed herein and I am, therefore, personally familiar with the facts stated in this affidavit. Some of the statements of fact are based on documents I have reviewed in Astilleros files, and in such instances I have identified where statements of fact herein based on examination of the files.

**FACTS RELATING TO THE QUESTION OF  
WHETHER ASTILLEROS WAS DOING BUSINESS  
WITHIN THE STATE OF NEW YORK.**

3. Astilleros is a Spanish corporation (Sociedad Anonima), engaged in ship construction and ship repair, with its principal place of business in Madrid, and is subject to the jurisdiction of the Spanish courts. All directors and officers of Astilleros are residents and citizens of Spain. Astilleros owns several shipyards, all of which are located in Spain.
4. None of Astilleros' ship construction or ship repair contracts has ever been entered into in New York.
5. In 1971, when it was believed there might be a New York market for ship construction and repair, Astilleros opened an office at 270 Park Avenue, New York City, staffed by a salesman and a secretary. This New York Office was closed in 1976, when it developed that no ship construction or repair contracts were generated by it. Since 1976 Astilleros has neither owned nor leased property or office space in New York. Astilleros is not registered to do business in New York.
6. In October, 1976 Astilleros entered into two contracts with Wesley D. Wheeler of New York. The contracts provided that Mr. Wheeler would act as exclusive representative to Astilleros in seeking to obtain ship construction and repair contracts.
7. The two-year contract relating to representation for ship construction, a copy of which is attached hereto as Exhibit A, terminated on September 30, 1978 and

has not been renewed. Under this contract Mr. Wheeler had no authority to negotiate or enter into contracts on behalf of Astilleros. Mr. Wheeler's sole activity was intended to be to introduce Astilleros to prospective parties interested in new vessel construction, in return for which Mr. Wheeler was to be paid a commission for any vessels built as a result of such introduction. Under this contract Mr. Wheeler also received a retainer of \$2,000 per month, to be reduced by any commissions due during such month. Our files show that during the term of this contract Mr. Wheeler did not introduce any customers leading to ship construction contracts for Astilleros, and accordingly he never received any commissions under this contract.

8. The other contract, relating to representation for ship repair contracts, attached hereto as Exhibit B, is similarly structured in terms of Mr. Wheeler's responsibilities. He has no authority to negotiate or enter into contracts on behalf of Astilleros. His sole function has been to refer to Astilleros prospective customers for ship repair. The principal difference between the ship construction and repair representation contracts is that Mr. Wheeler receives no monthly retainer under the repair contract, and any income he might earn under this contract is based solely on commissions paid to him or Astilleros' revenues from performing repair work in Spain on vessels owned or managed by United States companies, whether or not such work was introduced by Mr. Wheeler. During the entire year 1978 Mr. Wheeler was paid commissions in the total amount of \$14,657.37 as a result of repair work performed by Astilleros on vessels owned or managed by United States companies. The revenues on which these commissions were based amounted to 0.002471% of Astilleros provisional calculation of gross revenues for 1978.